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**COMMONWEALTH OF VIRGINIA**

**At the relation of the**

**STATE CORPORATION COMMISSION**

**v.**

**CASE NO. INS-2001-00272**

**BELINDA A. MOTIL, a/k/a**

**ELLEN A. MOTIL,**

**Defendant**

**REPORT OF MICHAEL D. THOMAS, HEARING EXAMINER**

**July 16, 2002**

**HISTORY OF THE CASE**

On January 11, 2002, the Commission entered a Rule to Show Cause (the "Rule") on behalf of the Bureau of Insurance (the "Bureau") against Belinda A. Motil, a/k/a Ellen A. Motil (the "Defendant") for the Defendant to appear at a hearing on February 26, 2002, and show cause, if any, why the Commission should not, in addition to a penalty under § 38.2-218 of the Code of Virginia, revoke the Defendant's insurance agent licenses.

On January 30, 2002, the Bureau, by counsel, filed a Motion to Amend the Rule to Show Cause. In its Motion, the Bureau stated that the alleged violations of § 38.2-1831 of the Code of Virginia cited in the Rule were taken from the statute as amended July 1, 2001. However, the Bureau alleged the Defendant's statutory violations occurred prior to July 1, 2001. In order to avoid any retroactive application of § 38.2-1831 in its amended form, the Bureau requested that the language of § 38.2-1831 currently in the Rule be replaced with the language of § 38.2-1831 that was in effect prior to July 1, 2001. Specifically, the Bureau desired to allege the Defendant: (i) has been guilty of fraudulent or dishonest practices; and (ii) is not trustworthy or competent to solicit, negotiate, procure, or effect the classes of insurance for which a license is applied for or held.

On February 11, 2002, the Defendant filed a Response to the Bureau's Motion to Amend the Rule to Show Cause. The Defendant stated she intended to appear at the hearing scheduled for February 26, 2002, to contest this matter.

By Hearing Examiner's Ruling entered on February 14, 2002, the Rule was amended to allege that the Defendant: (i) has been guilty of fraudulent or dishonest practices; and (ii) is not trustworthy or competent to solicit, negotiate, procure, or effect the classes of insurance for which a license is applied for or held.

The hearing on the Rule was convened as scheduled on February 26, 2002. The Bureau appeared by its counsel, Scott A. White, Esquire, and the Defendant appeared *pro se*.

## **SUMMARY OF THE EVIDENCE**

The Defendant is a resident of the Commonwealth of Virginia, and is currently licensed by the Commission as a life and health, and property and casualty insurance agent. (Ex. 2).

This matter arises as a result of the Defendant's answer to Question 1 on her applications for Virginia resident life and health, and property and casualty insurance agent licenses. The question reads:

Has this or any other insurance department ever refused to allow you the authority to transact the business of insurance or suspended or revoked or requested a voluntary surrender of your authority?

If so, and you have not previously filed this information with this Bureau, attach a sheet with a complete explanation.

Ex. 5.

The Defendant answered this question "No" on each of her applications. On July 26, 2000, the Bureau received the applications in question and issued the Defendant her Virginia resident life and health, and property and casualty insurance agent licenses. (*Id.*). The Defendant currently holds a life and health insurance appointment in Virginia with J.C. Penney Life Insurance Company, and a property and casualty insurance appointment with J.C. Penney Casualty Insurance Company. (Ex. 2).

A review of the Defendant's Virginia licensing history indicates that she previously held a resident life and health, and a resident property and casualty insurance agent license. The Defendant was initially licensed as a life and health insurance agent on April 14, 1983, and as a property and casualty insurance agent on December 10, 1987. (Ex. 2). On September 24, 1995, at the request of the Bureau, the Defendant voluntarily surrendered her life and health, and property and casualty insurance agent licenses. (Ex. 1).

In 1998, the Defendant applied to the Bureau for a resident life and health license. This application was returned to the Defendant on May 6, 1998. The Bureau's Assistant Supervisor, Agents Investigation Section, Life and Health Division advised the Defendant that she had incorrectly answered Question 4 on the application. (Ex. 3). The question reads:

Has this or any other insurance department ever refused to allow you the authority to transact the business of insurance or suspended or revoked or requested a voluntary surrender of your authority?

Ex. 4.

The Defendant answered this question "No." The Defendant was reminded that that she had voluntarily surrendered her Virginia insurance license authority on September 24, 1995. She was cautioned that the Bureau expected her to disclose this information on her application when

applying for an insurance agent's license. (Ex. 3). The Defendant resubmitted her application on July 21, 1998. This time she answered Question 4 "Yes," and provided the Bureau an explanation of the circumstances involving her voluntary surrender. (Ex. 4). The Bureau issued the Defendant a resident life and health insurance agent license on September 29, 1998. This license was administratively terminated on December 29, 1999, for failure to maintain an appointment. (Ex. 2).

The Defendant's insurance agent activities were not restricted to Virginia. In December 1998, Defendant applied to the Iowa Insurance Division for a nonresident life, and accident and sickness, insurance agent license. On the application, the Defendant answered "No" to Question B, Part III- Background Information. The question reads:

Has any disciplinary action, including but not limited to, refusal, suspension, revocation, ever been taken by any regulatory agency in any state or any province of Canada against you or any business with which you have been directly connected?

Ex. 7.

By letter dated December 23, 1998, the Iowa Insurance Division advised the Defendant that she should have answered "Yes" to Question B, as a result of the administrative action that had occurred in Virginia in 1995. The Defendant was given three options to resolve the matter: withdraw her application; pay a civil penalty of \$100.00; or request a hearing. (Ex. 8). In January 1999, the Defendant chose to pay the \$100.00 administrative penalty. (Exs. 9, 10, and 11).

In June 1999, the Iowa Insurance Division issued a Notice of Hearing to the Defendant. The Iowa Insurance Division was seeking the revocation of the Defendant's nonresident insurance agent license and the imposition of fines for failing to notify the Division timely that the State of Wisconsin, Department of Insurance had taken administrative action against the Defendant. A hearing was scheduled for July 8, 1999. (Ex. 13).

On July 8, 1999, the hearing was convened as scheduled. The Defendant did not appear. In his Proposed Findings of Fact, Conclusions of Law, and Order of August 12, 1999, the administrative law judge that heard the case found the Wisconsin Department of Insurance had denied the Defendant an insurance agent license on March 17, 1999, and that the Defendant failed to notify the Iowa Division of Insurance of that fact. The administrative law judge suspended the Defendant's nonresident insurance agent license and assessed a civil penalty of \$500.00 and costs of \$100.00. He further ordered that the Defendant's license would remain suspended until she made a full report to the Division of Insurance of other state disciplinary actions against her, and paid the penalty and costs imposed in the case. (Ex. 14).

In December 1998, the Defendant also applied to the Wisconsin Office of the Commissioner of Insurance for a nonresident life, and accident and health, insurance agent license. In her application, the Defendant answered Question 1 "No." The question reads:

Have you or has any occupational license held by you or your business been censured, suspended, revoked, canceled, terminated, surrendered, denied, fined, or

had other administrative action or arbitration taken or are you or your business currently the subject of any type of administrative action in any state including Wisconsin? (Do not include terminations due solely to noncompliance with educational requirements or nonrenewals due solely to nonpayment of a renewal fee.)

Ex. 15.

By letter dated January 8, 1999, the Agent Licensing Section, Wisconsin Office of the Commissioner of Insurance requested additional information concerning the Defendant's application. The Agent Licensing Section's investigation revealed that the Defendant's voluntary surrender of her Virginia insurance agent licenses had not been disclosed on her application. The letter requested that the Defendant provide certain requested information within 14 days. (Ex. 16). Because of the Defendant's failure to respond, the Wisconsin Office of the Commissioner of Insurance refused to grant the Defendant a nonresident insurance agent license. (Ex. 17).

Not deterred by her initial lack of success, the Defendant again applied to the Wisconsin Commissioner of Insurance for a nonresident life, and accident and health, insurance agent license in April 2001. In her application, the Defendant answered "No" to Question 2. The question reads:

Have you or any business in which you are or were an owner, partner, officer, or director ever been involved in an administrative proceeding regarding any professional or occupational license? "Involved" means having a license censured, suspended, revoked, cancelled, terminated; or, being assessed a fine, placed on probation or surrendering a license to resolve an administrative action. "Involved" also means being named as a party to an administrative or arbitration proceeding which is related to a professional or occupational license. "Involved" also means having a license application denied or the act of withdrawing an application to avoid a denial. You may exclude terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee. . . .

Ex. 18.

By letter dated July 25, 2001, the Agent Licensing Section, Wisconsin Office of the Commissioner of Insurance requested a complete explanation of all the administrative actions taken against the Defendant. (Ex. 19). By letter dated August 20, 2001, the Defendant explained that she had been accused of misappropriation of client funds, which she continued to deny, and that during the course of the investigation she voluntarily surrendered her insurance agent license. (Ex. 20). By letter dated August 28, 2001, the Wisconsin Office of the Commissioner of Insurance denied the Defendant's application. The Agent Licensing Section cited the Defendant's failure to provide a complete explanation of the previous administrative actions taken by the states of Iowa, Missouri, Wisconsin, and possibly Virginia, as the basis for denying the application. (Ex. 21).

The Bureau presented the testimony of two witnesses: Linda G. Fox, an investigator in the Bureau's Agents Investigation Section; and Emil B. Deliberto, supervisor in the Bureau's Agents Licensing Section.

Ms. Fox testified she investigated the original complaint filed against the Defendant. In August 1995, Ms. Fox received a complaint from American National Insurance Company (“American National”) that one of their insureds alleged the Defendant forged his name on several insurance loan forms and several checks issued by American National. American National provided copies of an affidavit executed by the insured relating to the forgeries, copies of the alleged forged loan forms, and copies of the alleged forged checks. Since the case involved a possible larceny, Ms. Fox contacted the Virginia Beach Police Department for assistance. (Tr. at 14-16).

Ms. Fox and Detective Sager from the Virginia Beach Police Department visited the Defendant’s residence. At the time, the Defendant was not at home, so Ms. Fox explained to her husband that if she voluntarily surrendered her insurance agent’s license that would end the Bureau’s investigation into the complaint. The Defendant’s husband agreed to discuss the matter with her. The Defendant’s husband later contacted Ms. Fox. He advised Ms. Fox that the Defendant was amenable to voluntarily surrendering her license, would execute the surrender form, and leave it outside their door in an envelope for Ms. Fox. When Ms. Fox picked up the voluntary surrender form, she tried to speak with the Defendant, but ended up speaking with her husband again. Ms. Fox asked her husband if the Defendant reviewed, understood, and signed the document. He answered “yes” to all three questions. (Tr. at 15-20).

Between June and August 2001, several insurance companies contacted Ms. Fox regarding the Defendant’s current license status in Virginia. Ms. Fox was surprised to hear the Defendant’s name because she had heard the Defendant was going to be prosecuted for the alleged larceny. Ms. Fox reviewed the Bureau’s agent’s licensing records and found that the Bureau had issued the Defendant her life and health, and property and casualty insurance agent licenses. In October 2001, Ms. Fox advised Mr. Deliberto that the Defendant had been re-licensed.

Mr. Deliberto confirmed that the Defendant was in fact licensed as a life and health, and property and casualty, insurance agent. (Tr. 24-25). His testimony covered the admission of the documents, which were used to develop the chronological summary of the Defendant’s activity set forth above. Mr. Deliberto checked the agent licensing system maintained by the National Association of Insurance Commissioners (the “NAIC”) to determine in what other states the Defendant had applied for an insurance agent’s license, and he requested copies of her license applications from those states. (Tr. at 44).

Mr. Deliberto noted that the various insurance agent applications require the applicant to swear before a notary that the answers contained in the application are true and correct. (Tr. 38, 48, 50, 53, and 61).

Mr. Deliberto summarized that on the date the Defendant signed her applications for her current Virginia insurance agent licenses she failed to disclose: (1) the fact that she had previously voluntarily surrendered her insurance agent license in Virginia; (2) the denial of an insurance agent license in the State of Missouri in 1999; (3) the license suspension and fines imposed in the State of Iowa in 1999; and (4) the denial of an insurance agent license in Wisconsin in 1999. Mr. Deliberto recommended that the Commission revoke the Defendant’s insurance agent licenses. (Tr. 68-69).

Mr. Motil testified on behalf of his wife. He testified that he convinced his wife to surrender her license. At the time, they thought a voluntary surrender meant that there was no administrative action taken against her license. Notwithstanding the Bureau returning a previous application and advising them of the correct way to answer the question regarding previous disciplinary action, they still believe that the correct answer is “No.” Mr. Motil stated it was not his wife’s intent to deliberately deceive anyone. (Tr. 82, 87, 91-93).

Mr. Motil also stated he and his wife believed the applications in the other states required a “No” answer. They continue to believe that a voluntary surrender does not involve disciplinary action. They did not respond to the inquiries from the other states because the Defendant was in the Philippines caring for an ill family member. (Tr. 94-98, 101-105, 121-22).

On cross-examination, Mr. Motil testified his wife read and understood the insurance agent applications in question, signed the applications, and certified under oath that the answers were correct. He testified that his wife surrendered her license to avoid disciplinary action. (Tr. 112-15).

## **DISCUSSION**

The Bureau alleges that the Defendant: (i) has been guilty of fraudulent or dishonest practices; and (ii) is not trustworthy or competent to solicit, negotiate, procure, or effect the classes of insurance for which a license is applied for or held. § 38.2-1831 of the Code of Virginia (1999 Repl. Vol.).

The evidentiary standard that must be met before a violation of the Code of Virginia may be found is “clear and convincing.” Rule 5 VAC 5-20-90 A. The Virginia Supreme Court has defined this standard as:

that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and *unequivocal*.

*Gifford v. Dennis*, 230 Va. 193, 198 n.1, 335 S.E.2d 371, 373 n.1 (1985) (quoting *Walker Agcy. & Aetna Cas. Co. v. Lucas*, 215 Va. 535, 540-41, 211 S.E.2d 88, 92 (1975) (emphasis in original)).

In ordinary usage, “dishonest” means “disposed to lie, cheat, defraud or deceive.” The American Heritage College Dictionary 398 (3d ed. 1997).

The language in the Virginia applications is clear and unambiguous. The application asks:

Has this or any other insurance department ever refused to allow you the authority to transact the business of insurance or suspended or revoked or requested a voluntary surrender of your authority?

If so, and you have not previously filed this information with this Bureau, attach a sheet with a complete explanation.

Ex. 5.

The Defendant's correct response should have been: "Yes, I have already filed the information with the Bureau concerning the voluntary surrender of my license, and here is additional information of several instances where I have had an insurance agent's license suspended, or where I was refused a license." Instead, she answered "No." The Defendant swore before a notary that the answers to the questions on the application were true and correct. Ordinarily, I would be sympathetic to the Defendant's argument that she did not understand the question, given her limited command of the English language, but the Defendant was clearly on notice as far back as 1998 of the answer required for this question. At that time, she corrected her answer from "No" to "Yes," provided an explanation of her voluntary surrender, resubmitted her application, and was licensed. I do not for a minute believe the Defendant misunderstood the question when she applied for her most recent insurance agent licenses.

I find the Bureau has established by clear and convincing evidence that the Defendant has been guilty of dishonest practices by lying in order to obtain her life and health, and property casualty insurance agent licenses.

I further find the Bureau established by clear and convincing evidence that the Defendant is not trustworthy or competent to solicit, negotiate, procure, or effect the classes of insurance for which she held licenses. The Bureau established the Defendant engaged in a systematic scheme to obtain insurance agent licenses in a number of jurisdictions by falsifying her applications for licenses. The business of insurance is grounded on trust. I find Defendant is lacking this requisite quality. As evidenced by her habitual lying on applications for insurance agent licenses, the Defendant cannot be trusted to accurately complete forms related to the business of insurance.

Accordingly, I recommend that the Commission enter an order revoking the Defendant's life and health, and property and casualty insurance agent licenses.

## **COMMENTS**

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and 5 VAC 5-20-120 C) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within twenty-one (21) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of

such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

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Michael D. Thomas  
Hearing Examiner